IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.585 of 2006

Reserved on 12.10.2007

Date of decision 5.11.2007

Roshan Lal Petitioner

Vs.

Union of India and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr.Baldev Singh, Advocate.

For the respondents: Mr.M.A.Khan, Central Government Counsel.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this writ petition are that the petitioner was enrolled in J & K Rifles on 15.9.1965 as Sepoy. He was promoted to the rank of Subedar with effect from 7.8.1989 and was granted honorary rank of Lieutenant with effect from 15.8.1993 and honorary Captain with effect from 1.10.1993. He was transferred to the pension establishment with effect from 1.10.1993 after he had rendered 28 years and 16 days qualifying service for which he was granted service pension at the rate of Rs.1650/- per month with effect from 1.10.1993. He got himself enrolled in Defence Security Corps on 3.9.1995 against the rank of Subedar. He had rendered 6 years and 212 days service with the Defence Security Corps. He was placed in low medical category CEE

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[1] Whether reporters of local papers are allowed to see the judgment? No.

(temporary) with effect from 25.8.1998 due to disease "DPIVDL 4/5 L5/51 722(a)" and was upgraded to low medical category BEE (temporary) with effect from 24.8.1996 and BEE (permanent) w.e.f. 24.2.1997. He was granted disability pension with effect from 1.10.2001 to 14.3.2002. It appears that the petitioner was brought before the Re-survey Medical Board on 19.9.2002 and his disability was assessed at less than 20%. The PCDA (Pension) Allahabad discontinued the payment of disability pension vide letter dated 28.2.2003. He filed an appeal against the decision but the same was not considered by the appellate authority. He approached this Court by way of a writ petition No.672 of 2004, which was decided by a Division Bench of this Court on 27.4.2005. The operative portion of the judgment dated 27.4.2005 reads thus:

> "Leaving matter here only, while finally disposing of this writ petition, it is ordered as under:-
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> a) that respondents shall now examine Annexure P5 filed by the petitioner, i.e. the appeal against the rejection of disability pension and shall then deal with the same in accordance with law;
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> b) Final decision will be taken by the appropriate Authority on Annexure-P5 by and before 31st August, 2005 by a reasoned order. After the decision is taken, the same shall be communicated to the petitioner. It hardly needs to be clarified in this behalf that decision will now be taken up on Annexure-P5 in a dispassionate manner without being influenced by the stand of the respondents that no appeal was preferred;
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> c) In case after examination of Annexure –P5 it is found that petitioner is entitled to admissible relief under the relevant Pension Regulations, in such a situation bar of limitation will not come in the way of grant of admissible relief to him. Reason for making this observation is that claim for admissible pension is a recurring cause of action available to a litigant like petitioner; and
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> d) In the event of appeal being rejected, petitioner will be free to have such recourse against the appellate order as is permissible under law.
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> '**Dasti** copy to the learned counsel for the parties."

Consequently the case was considered by the competent authority at Army Headquarters and it was referred to the office of the Directorate

General Armed Forces Medical Services(DGA FMS), Ministry of Defence, New Delhi for opinion. It was ruled by the DGAFMS vide its letter dated 25.7.2005 for holding a review medical board for the petitioner at Army Hospital or Armed Forces Medical College, Pune. The Review Medical Board was held on 17.11.2005 at Army Hospital, Delhi Cantonment which had re-assessed the disability of the petitioner for 20% for life long with effect from 17.11.2005. Pursuant to the assessment made by the Medical Board, the petitioner was granted disability element at the rate of Rs.380/- per month with effect from 17.11.2005 for life.

Mr.Baldev Singh, learned counsel appearing for the petitioner had strenuously argued that his client was entitled to disability pension with effect from 15.3.2002 to 16.11.2005 more particularly when his disability has been re-assessed by the Medical Board on 17.11.2005. Mr.M.A.Khan, learned Central Government Counsel, appearing for the respondents had argued that since the disability of the petitioner was assessed at less than 20% by the Medical Board on 19.9.2002 even after the Re-survey Medical Board has assessed **it** 20% on 17.11.2005 the petitioner is not entitled for the disability pension for the intervening period with effect from 15.3.2002 to 16.11.2005.

I have heard learned counsel for the parties and have also gone through the record of the case carefully.

The petitioner was granted disability pension on the basis of the recommendation made by the Medical Board with effect from 1.10.2001 to 14.3.2002. The Re-survey Medical Board had assessed his disability less than 20% on 19.9.2002. The petitioner had assailed this decision before this Court by way of CWP No.672 of 2004. The operative portion of the judgment has already been reproduced here-in-above. This Court has specifically directed the respondents to consider the appeal dispassionately preferred by the petitioner. The Court had further directed

that in the eventuality of the petitioner held entitled to the relief after the examination of the appeal the bar of limitation will not come in his way. In sequel to the judgment dated 27.4.2005 of this Court the case was considered by the competent authority at the highest level and the same was referred to the office of the Directorate General Armed Forces Medical Services (DGA FMS), Ministry of Defence, New Delhi. The DGAFMS had directed the authorities to held review medical board. The Board was constituted on 17.11.2005 and disability of the petitioner was assessed at 20% for life. The petitioner was held entitled for disability pension with effect from 17.11.2005 for life. At the time when the petitioner was medically examined by the re-survey Medical Board on 19.9.2002 his disability was assessed at less than 20%. He was advised to file an appeal before the competent authority. The appeal was considered only on the intervention of this Court by way of judgment dated 27.4.2005. In the appeal the petitioner had assailed the decision of the Re-survey Medical Board. This decision of the Re-survey Medical Board dated 19.9.2002 will now deemed to have been set aside on the basis of the recommendations made by the Review Medical Board in its decision on 17.11.2005. The petitioner's disability will now revert back to the year 2002. It will be presumed that the disability of the petitioner was 20% in the year 2002 itself. Once the review medical board had taken the decision on the basis of which the disability of the petitioner has been assessed at 20% the petitioner was to be granted disability pension with effect from 15.3.2002 to 16.11.2005 as well without forcing him to approach this court for the redressal of his grievance by way of this petition. The respondents have taken a very hyper technical view of the matter. The matter can be viewed from another angle as well. The disability of the petitioner was assessed immediately after his release which was found to be 20%. He was again directed to appear before the

Re-survey Medical Board on 19.9.2002. His disability was assessed at less than 20%. But his disability has again been assessed at 20% by the Medical Board on 17.11.2005. The position which emerges from the three medical reports is that his disability was assessed at 20% in the year 2001 less than 20% in 2002 and again re-assessed at 20% in the year 2005. If the disability was 20% in the year 2001 and 20% in 2005 it cannot be presumed that it was less than 20% in the year 2002.

Consequently this writ petition is allowed and letter No.GB/RA/1/03/1640/IV dated 28.2.2003 is quashed and set aside. The respondents are directed to grant to the petitioner the disability pension for the intervening period as well i.e. with effect from 15.3.2002 to 16.11.2005 with interest at the rate of 9% p.a. within a period of eight seeks from today with no order as to costs.

November 5, 2007 (g) **(Rajiv Sharma), J.**